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1 relevant times hereto. In committing the acts and omissions alleged hereto, Defendant Smith was
2 acting under color of state law and within the course and scope of his employment as an officer
3 in the Seattle Police Department. Defendant Smith is sued in his official and individual
4 capacities.

5 1.3 Defendant John T. Brooks is a sergeant with the Seattle Police Department at all
6 relevant times hereto, and is believed to have approved the arrest of the plaintiff. In committing
7 the acts and omissions alleged hereto, Defendant Brooks was acting under color of state law and
8 within the course and scope of his employment as an officer in the Seattle Police Department.
9 Defendant Brooks is sued in his official and individual capacities.

10 1.4 Defendant John Diaz was Chief of Police for the Seattle Police Department at all
11 relevant times hereto. In committing the acts and omissions alleged hereto, Defendant Diaz was
12 acting under color of state law and within the course and scope of his employment with the
13 Seattle Police Department. Defendant Diaz is sued in his official and individual capacities.

14 1.5 Defendant John or Jane Does I-IV include the other four Seattle Police Officers
15 who assisted defendant Stephen Smith in the arrest and use of excessive force against plaintiff
16 Garland or who failed to investigate the plaintiffs' arrest. John or Jane Does I-IV were acting
17 under color of state law and within the course and scope of their employment as officers in the
18 Seattle Police Department.

19 1.6 The City of Seattle is a municipal corporation in the State of Washington. Under
20 its authority from the laws of the State of Washington, the City of Seattle operates the Seattle
21 Police Department.
22

2.1 This action is brought pursuant to 42 U.S.C. § 1983 for violations of the Fourth and Fourteenth Amendments to the United States Constitution. The court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1343.

IV. FACTS

3.3 Earlier that day, while photographing various events for Real Change, Mr. Garland was exposed to pepper spray being used on others by the Seattle Police Department. Thereafter, Mr. Garland covered his nose and mouth with a scarf in an effort to protect himself from any further exposure to other pepper sprays.

3.4 Near the intersection of 1st Avenue and Pike St. in downtown, protesters had gathered and began chanting “Let him go! Let him go!” in reference to the Seattle Police Department arresting a protester at that time. Mr. Garland was trying to take photos of the situation and was standing near the line of police officers.

3.5 Without warning or provocation, Officer Smith shoved Mr. Garland backwards. Mr. Garland stumbled back a couple steps, and as he attempted to regain his balance, he was

1 yanked out of the crowd by Officer Smith. Officer Smith then threw Mr. Garland to the ground,
 2 wherein the other named defendant police officers helped to pin down Mr. Garland, while he was
 3 handcuffed and arrested. Officer Smith claimed in a sworn statement that Mr. Garland had
 4 grabbed his arm and twisted it, causing pain. Officer Smith's conduct was unlawful, malicious,
 5 and had no purpose, other than to punish the plaintiff and inflict pain.

6 3.6 Mr. Garland was charged with third degree assault, and his case was proceeding
 7 to trial. Those charges, however, were later dropped, because video evidence directly
 8 contradicted Officer Smith's version of the events. Along with the humiliation of being arrested
 9 in front of a crowd of people and almost losing his job due to the charges against him, Mr.
 10 Garland also suffered injuries. In addition to the various bumps and bruises, the actions by the
 11 Seattle Police Department caused a tear in the meniscus in his right knee.

12 3.7 No investigation was conducted into the arrest of the plaintiff or into the conduct
 13 of Officer Smith, whose sworn statement was directly contradicted by video evidence. To the
 14 best of plaintiff's knowledge, no discipline or retraining was performed with respect to Officer
 15 Smith's false statements and the unlawful arrest of the plaintiff.

17 **V. CLAIMS FOR RELIEF**

18 **FIRST CLAIM FOR RELIEF**

19 **42 U.S.C. § 1983**

20 **Violation of the Fourth and Fourteenth Amendments to the US Constitution:**

21 **Unlawful Search, Seizure, and Arrest by Use of Excessive**

22 **and Unlawful Force on May 1, 2013**

23 **Against Defendants SMITH and BROOKS in their individual and official capacities.**

24 4.1 Plaintiff realleges and incorporates by reference paragraphs 1.1 through 3.6 of this
 complaint as though fully set forth therein.

1 4.2 On May 1, 2013, as described above at paragraphs 1.1 through 3.6, defendant
2 Smith deprived plaintiff Garland of his clearly established right to be free from unjustified and
3 excessive force utilized by police officers, as guaranteed by the Fourth and Fourteenth
4 Amendments to the United States Constitution. Specifically, Officer Smith violated plaintiff
5 Garland's constitutionally protected rights by arresting him without probable cause and using
6 excessive force in making the unlawful arrest. Officer Smith made false statements in order to
7 justify the unlawful arrest of the plaintiff and the use of force against him. Sergeant Brooks
8 approved and ratified the unlawful arrest of the plaintiff and the use of force against him without
9 investigation or verification of the false statements made by Officer Smith.

10 4.3 Defendants deprived plaintiff of his clearly established right to be free from
11 unjustified and excessive force utilized by police officers, as guaranteed by the Fourth and
12 Fourteenth Amendments to the United States Constitution. Plaintiff was damaged by reason
13 thereof in at least the following respects:

- 14 a. Physical pain and suffering;
15 b. Permanent injury to Plaintiff's person;
16 c. Emotional pain and suffering.

17 4.4 Defendant Smith deprived plaintiff of his clearly established right, under the
18 Fourth Amendment, to be free from unreasonable searches and seizures. Defendant Smith lacked
19 the required probable cause for an arrest of Plaintiff Garland.

20 4.5 Plaintiff Garland was subjected to the deprivation of rights by defendant Smith,
21 acting or pretending to act under color of state law and of statutes, or ordinances, regulations,
22 customs and usages of the law of the United States and State of Washington which rights
23

1 include, but are not limited to, privileges and immunities secured to plaintiff Garland by the
 2 Constitution and laws of the United States. By reason of the acts specified herein Defendant
 3 Smith violated the constitutional rights of plaintiff Garland, including those provided in the
 4 Fourth and Fourteenth Amendments to the U.S. Constitution.

5 4.6 As a direct and proximate result of this conduct, plaintiff Garland has suffered and
 6 will continue to suffer from physical and psychological harm, mental distress, humiliation,
 7 embarrassment, and fear and has suffered personal injury and emotional distress and incurred
 8 general damages for the deprivation of his constitutional rights, including but not limited to
 9 medical expenses.

10 **SECOND CLAIM FOR RELIEF**

11 **42 U.S.C. § 1983**

12 **Violation of the Fourth and Fourteenth Amendments to the Constitution: Failure to Adequately Supervise and Train Seattle Police Department Officers Against Defendants CITY OF SEATTLE and SEATTLE POLICE DEPARTMENT.**

13 5.1 Plaintiff realleges and incorporates by reference paragraphs 1.1 through 4.6 of this
 14 complaint as though fully set forth herein. The allegations contained in paragraphs 5.2 through
 15 5.3 below will have evidentiary support after a reasonable opportunity for further investigation or
 16 discovery.

17 5.2 Defendants City of Seattle and the Seattle Police Department, under color of law,
 18 intentionally, negligently, and with complete and deliberate indifference to plaintiff's rights,
 19 proximately caused plaintiff to be deprived of his constitutional rights including but not limited
 20 to the Fourth and Fourteenth Amendments to the United States Constitution, by:

- 21 a. Failure to adequately screen candidates for employment as police officers with
- 22 regard to past allegations of misconduct while employed by other law
- 23

1 enforcement agencies;

2 b. Failure properly to supervise the training and conduct of Defendant Smith despite

3 constructive or actual knowledge of unlawful actions by Defendant Smith;

4 c. Failure to appoint, promote, train, supervise and discipline Police Officers,

5 including Defendant Smith, who enforce the laws in effect in the City of Seattle

6 and who would protect the constitutional rights of the people of the City of

7 Seattle;

8 d. Failure to properly and adequately train the officers in the Seattle Police

9 Department, including Defendant Smith, in the use of force against citizens

10 during the course of investigation and arrest;

11 e. Failure to enforce the provisions of the Constitution of the United States

12 concerning the use of force against citizens and provision of medical care to

13 citizens injured during arrest;

14 f. Maintaining a policy and custom of using excessive force against citizens and

15 failing to provide medical care to citizens injured during arrest;

16 g. Failing to address this failure despite being informed of such policy and custom;

17 and

18 h. Failing to issue any policy whatsoever, or issuing vague, confusing, and

19 contradictory policies, concerning the use of force against citizens and provision

20 of medical care to citizens injured during arrest, inconsistent with the

21 requirements of the Fourth and Fourteenth Amendments to the United States

22 Constitution.

1 5.3 As a proximate result of the conduct of these Defendants, Plaintiff Garland has
2 suffered and will continue to suffer from physical injury, psychological harm, mental distress,
3 humiliation, embarrassment and fear and has suffered personal injury and emotional distress and
4 incurred general damages for the deprivation of his constitutional rights including those damages
5 pled above.

6 **THIRD CLAIM FOR RELIEF**

7 **42 U.S.C. § 1983**

8 **Violation of the Fourth and Fourteenth Amendments to the Constitution:**
9 **Ratification Against Former Chief John Diaz.**

10 5.1 Plaintiff realleges and incorporates by reference paragraphs 1.1 through 4.6 of this
11 complaint as though fully set forth herein. The allegations contained in paragraphs 5.2 through
12 5.3 below will have evidentiary support after a reasonable opportunity for further investigation or
13 discovery.

14 5.2 Defendant, former Chief John Diaz, under color of law, intentionally, negligently,
15 and with complete and deliberate indifference to plaintiff's rights, proximately caused plaintiff to
16 be deprived of his constitutional rights including but not limited to the Fourth and Fourteenth
17 Amendments to the United States Constitution, by:

- 18 a. Ratifying the unlawful arrest of the plaintiff and use of force against him;
19 b. Failing to investigate, discipline, or retrain Officer Smith, after his false
20 statements caused the unlawful arrest of the plaintiff;

21 **VI. PRAYER FOR RELIEF**

22 Wherefore, Plaintiff prays for judgment against defendants as follows:

- 23 1. For compensatory damages in an amount according to proof;
24 2. For punitive damages against individual defendants only, in amounts

1 according to proof;

2 3. For reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988 and
3 as otherwise authorized by statute or law;

4 4. For costs of suit;

5 5. Declaratory and injunctive relief; and

6 6. For such other and further relief as the court deems just and proper.

7 DATED this _____ day of _____, 2013.

8
9 OSBORN MACHLER

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11 _____
12 Simeon J. Osborn, WSBA #14484
13 Susan Machler, WSBA #23256
14 Attorneys for Plaintiffs
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